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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LUCIO JOHN AUDELO,

Defendant and Appellant.

E048768

(Super.Ct.No. FSB056471)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donna G. Garza,
Judge. Affirmed.

Brett Harding Duxbury, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and
Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Lucio John Audelo of the second degree murder of Lazaro Espino (count 1—Pen. Code § 187, subd. (a)).¹ The jury additionally found true allegations that defendant committed the crime for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(c)); personally and intentionally discharged a firearm causing the death of the victim (§ 12022.53, subd. (d)); personally and intentionally discharged a firearm (§ 12022.53, subd. (c)); and personally used a firearm (§ 12022.5, subd. (a)). The trial court sentenced defendant to an indeterminate term of imprisonment of 40 years to life. On appeal, defendant contends the trial court committed reversible error in permitting the People’s gang expert to testify regarding the origin of defendant’s gang moniker, and that insufficient evidence supports a finding that Colonia Trece, defendant’s gang, was a criminal street gang within the meaning of section 186.22. We affirm the judgment in full.

FACTUAL AND PROCEDURAL HISTORY

On August 31, 2004, defendant rode up to the home of Miguel Gomez on his bicycle; several persons were gathered in the front yard. Defendant asked ““Who’s this fool,”” referring to Gomez. Defendant then directly asked Gomez ““Where you from?”” Gomez replied that he associated with KBS.² Defendant then pulled a handgun from his waist and started firing at Gomez. Gomez was struck by six bullets and was taken to the hospital. Nine, 9-millimeter shell casings were recovered from the scene.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² KBS is an acronym for the gang King Boulevard Stoners.

On the evening of September 23, 2004, Eddie Meza, an associate of Colonia 13 known as “Little Boxer,” was at his friend Chico’s house. Chico was a member of Colonia 13. Two other individuals whom he knew only as “Creeps” and “Chino” asked him for a ride home; he agreed.³ They gave him directions and eventually told him to stop. Defendant got out of the car. Meza heard someone ask ““what’s up homies?”” After a brief moment, he heard a number of gunshots. Bullets hit the car shattering the window. After the shooting stopped, defendant got back into the car; Meza drove off.

Clider Hidalgo testified that he was visiting his girlfriend’s family the evening of September 23, 2004. He was outside in an alley with several others when a car drove by twice. The car eventually stopped in the alley. A Hispanic male exited the vehicle and started shooting in the direction of the individuals gathered in the alley. The shooter fired at least nine times. Lazaro Euspino died of a single gunshot wound to the chest and abdomen. Twelve 9-millimeter shell casings and an unexpended nine-millimeter cartridge were collected at the scene. All 12 shell casings were fired from the same weapon. The unexpended cartridge was determined to be a misfired bullet with a pin impression matching the other 12 shell casings. The 12 expended shell casings matched the nine recovered from the scene of Gomez’s shooting.

Homicide Detective John Gaffney interviewed defendant on June 10, 2006. Defendant informed the detective that he and his associates had driven up to paint graffiti on the wall adjacent to a liquor store. He initially reported that he started taking fire from

³ Meza later identified defendant as “Creeps.”

the individuals in the alley as soon as he stepped out of the car. However, he later indicated that he saw people walking up the alley with guns, so he attempted to fire first, but his gun jammed. Defendant admitted being a member of Colonia Trece who went by the moniker “Creeper” or “Little Creeper.” Defendant believed the individuals standing in the alley were members of KBS.⁴ In an interview with another detective, Jason Hernandez reported being present in the alley that night. He indicated that individuals in the alley fired first. However, at trial Hernandez testified that he lied to the detective; that he was not even present at the shooting.

Kevin Snyder, a gang officer for the San Bernardino County Sheriff’s Department testified that Colonia Trece was a Hispanic street gang claiming territory predominantly in the west side of the city of Highland. Its main rival was KBS; in the fall of 2004 there was a rivalry between the two gangs over territory. The primary activity of Colonia Trece was the commission of “homicides, attempt[ed] homicides, assault with a deadly weapon, [and] possession of guns.” In the immediate vicinity of the shooting was a tag on the wall reading “KBS”; the tag had been crossed out “which is a sign of disrespect.” The location of the shooting was also an area claimed by both Colonia Trece and KBS.

⁴ Lazaro Euspino was actually a member of Florencia 13, a Los Angeles based gang which had moved into the area within the past 10 to 12 years.

DISCUSSION

A. EXPERT OPINION

Defendant contends that Officer Snyder's testimony regarding the origin of defendant's gang moniker lacked foundation, had no probative value, and was unduly prejudicial; thus, its admission resulted in reversible error. We disagree.

It is well settled that in cases where gang offenses and enhancements are alleged, expert testimony regarding the culture, habits, and psychology of gangs is generally permissible because these subjects are ““sufficiently beyond common experience that the opinion of an expert would assist the trier of fact. [Citations.]” [Citation.]’ [Citation.]” (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 656; see also *People v. Gardeley* (1996) 14 Cal. 4th 605, 617; *In re Frank S.* (2006) 141 Cal.App.4th 1192, 1196-1197.) For example, an expert may properly testify concerning “the size, composition or existence of a gang [citations], gang turf or territory [citations], an individual defendant's membership in, or association with, a gang [citations], the primary activities of a specific gang [citations], motivation for a particular crime, generally retaliation or intimidation [citations], whether and how a crime was committed to benefit or promote a gang [citations], rivalries between gangs [citation], gang-related tattoos, gang graffiti and hand signs [citations], and gang colors or attire [citations].” (*Killebrew*, at p. 657, fn. omitted.) “A trial court's determination as to whether an expert should be allowed to opine about a particular subject is reviewed on appeal for abuse of discretion. [Citations.]” (*People v. Sandoval* (2008) 164 Cal.App.4th 994, 1001.)

The People asked Officer Snyder what the gang moniker “Creeper” meant. Defense counsel objected on the ground that any answer would be speculation beyond the range of Officer Snyder’s expertise. The trial court permitted the People to continue so long as they laid sufficient foundation. Officer Snyder eventually testified that in the gang community to creep up on somebody means “to move in on somebody and catch them slipping. . . . Roll up on somebody. I crept up on this fool. I caught him slipping and I smoked him. So, basically, to creep up on somebody, to do it stealth [*sic*] and to do your damage before that person really knows what your motive is or, you know, basically surprise them.” In Officer Snyder’s opinion, someone going by the name of “Creeper” would reflect “the fact that he has on many occasions, you know, either walking up on somebody and punching them, or catching them off guard, or creeping up on somebody and, you know, putting in work, shooting at them, killing them.”

The People laid sufficient foundation for Officer Snyder’s opinion testimony regarding the origin of defendant’s moniker; thus, the admission of such evidence was within the trial court’s discretion. Officer Snyder testified that he had worked in the City of Highland for six years where he “specialized in tracking and contacting the gang members in the city.” His primary gang contacts had been with Colonia Trece and KBS. He had spoken with well over 30 members and associates of Colonia Trece. He had investigated crimes involving Colonia Trece members as both suspects and victims. He had served and executed warrants on homes belonging to members of Colonia Trece. He gathered intelligence on Colonia Trece while executing such warrants. He had read other officer’s reports about crimes committed by members of Colonia Trece. He had spoken

with other officers about Colonia Trece. He had seen Colonia Trece use graffiti to mark its territory. He was familiar with Colonia Trece members' monikers, its gang names, and symbols.

Officer Snyder testified that a "gang moniker is basically a nickname given to a specific member of a gang. It usually has some significance to the person's appearance or what that person likes to do I mean, if in a Hispanic gang, they call a guy Flaco, it's probably because he's small in stature. So it kind of relates to that person, that individual person." The People asked if whether someone who goes by the moniker "Shooter" meant that person liked to shoot a gun. Officer Snyder replied that it did. Asked what it meant if someone went by the name "Psycho," Officer Snyder replied that the individual was crazy. If called "Oso," the person was a big, "heavy-set guy." In his experience he had spoken to numerous gang members regarding the meaning of their own and other members' monikers. Thus, the People laid sufficient foundation for Officer Snyder's testimony regarding the meaning of defendant's moniker.

Moreover, the evidence regarding the derivation of defendant's moniker was not unduly prejudicial. Officer Snyder's opinion shed light on how defendant earned his name, not on his propensity to act in the future. It reflected on an individual who had engaged in previous, surreptitious criminal behavior. However, the facts of both the charged crime and the previous crime adduced at trial revealed an individual who boldly announced himself and challenged other individuals before opening fire. Defendant asked "'Who's this fool?'" and "'Where are you from?'" before shooting Gomez. Likewise, he said "'what's up homies?'" before firing in the instant case. Thus, there was

no danger that defendant would be convicted on the basis of his moniker's meaning alone.

Finally, the evidence was probative of the nature of gangs and the acquirement of gang monikers, which was directly relevant to the jury's determination of whether defendant was a member of Colonia Trece. While defendant stipulated that Colonia Trece was a criminal street gang for purposes of the section 186.22 enhancement, he did not stipulate that he was a member of it. Thus, defendant's membership in Colonia Trece remained at issue. Officer Snyder testified that monikers were given to gang *members*. Gang *associates* were distinct from gang *members* in that they merely hang out with members of the gang, i.e., they have not "put in work" for the gang. The meaning of defendant's gang moniker reflected that he was not only an associate of the gang, but one who had "put in work" to become a member of the gang. Thus, Officer Snyder's opinion was probative of defendant's membership in Colonia Trece.

B. SUFFICIENCY OF THE EVIDENCE

Defendant contends that insufficient evidence supports a determination that Colonia Trece was a criminal street gang within the meaning of section 186.22. In particular, he maintains that the People failed to adduce sufficient evidence that Colonia Trece had, as one of its primary activities, the commission of statutorily enumerated crimes. However, as the People note, defendant stipulated that Colonia Trece was a criminal street gang: "The People and the defendant . . . have stipulated to the following: Colonia Trece is a criminal street gang as required pursuant to [section] 186.22." Thus,

defendant removed this element of the enhancement from the jury's consideration and the People were under no obligation to adduce such evidence.

DISPOSITION

The judgment is affirmed.

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/s/ MILLER
J.

We concur:

/s/ HOLLENHORST
Acting P. J.

/s/ McKINSTER
J.